



ACQUISITION AND
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

November 15, 1996

DP (DAR)

In reply refer to
DFARS Cases: 96-D023/96-D331
D. L. 96-019

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,
ASN (RD&A) /ABM
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING) , SAF/AQC
DIRECTOR, PROCUREMENT POLICY, ASA (RD&A)/SARD-PP
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS
AGENCY

SUBJECT: Foreign Machine Tools, Powered and Non-Powered Valves,
and Ball and Roller Bearings

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the expiration on October 1, 1996, of the restriction on machine tools and powered and non-powered valves at 10 U.S.C 2534 and to implement Section 8082 of the Fiscal Year 1997 Defense Appropriations Act (Public Law 104-208). Section 8082 extends applicability of the fiscal year 1996 restriction on procurement of foreign ball and roller bearings to acquisitions using fiscal year 1997 funds.

The attached final DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir

ENCLOSURE(2)



NOV 20 1996

DFARS Case 96-D023,
Foreign Machine Tools and Powered and Non-Powered Valves
Final Rule

DFARS Case 96-D331,
Ball and Roller Bearings
Final Rule

PART 212--ACQUISITION OF COMMERCIAL ITEMS

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SUBPART 212.5-APPLICABILITY OF CERTAIN LAWS TO — ACQUISITION OF COMMERCIAL ITEMS

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

- (a) The following laws are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components:

(xviii) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods.

(xix) ~~10 U.S.C. 34(c) reference for United States and Canadian Valves and Machine Tools [Reserved].~~

(xx) ~~43 U.S.C. [Reserved].~~

(A) ~~+0 U.S.C. [Reserved].~~

PART 225--FOREIGN ACQUISITION

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SUBPART 225.70-AUTHORITY, APPROPRIATIONS ACTS, AND OTHER STATUTORY RESTRICTIONS ON FOREIGN PURCHASES

~~225.7004 Restriction on machine tools and powered and non-powered valves [Reserved].~~

~~225.7004-1 Restriction:~~

~~In accordance with 10 U.S.C. 2534, through fiscal year 1996, do not acquire, either directly as end items or indirectly on behalf of the Government, the machine tools or powered and non-powered valves in 225.7004-2 unless they are of U.S. or Canadian origin.~~

~~225.7004-2 Applicability.~~

- ~~(a) Machine tools restricted under this section are those tools listed in Federal supply classes of metalworking machinery in the following categories—~~

FEDERAL SUPPLY	NAME
CLASSIFICATION (FSC)	
3405	Saw and filing machines
3408	Machine centers and way type machines
3410	Electrical and ultrasonic erosion machines
3411	Boring machines
3412	Broaching machines
3413	Drilling and tapping machines
3414	Gear cutting and finishing machines
3415	Grinding machines
3416	Lathes
3417	Milling machines
3418	Planers and shapers
3419	Miscellaneous machine tools
3426	Metal finishing equipment
3433	Gas welding, heat cutting, and metalizing equipment
3438	Miscellaneous welding equipment
3441	Bending and forming machines
3442	Hydraulic and pneumatic presses, power driven
3443	Mechanical presses, power driven
3445	Punching and shearing machines
3446	Forging machinery, and hammers
3448	Riveting machines
3449	Miscellaneous secondary metal forming and cutting machines
3460	Machine tool accessories
3461	Accessories for secondary metalworking machinery

- ~~(b) Machine tool accessories classified under FSC 3460 or 3461 are not components under 225.7004-5. Where a solicitation for machine tools includes machine tool accessories, list known machine tool accessories which are not separate line items in the provision at 252.225-7040, Machine Tool List. Identify accessories which are separate line items in the schedule. The contracting activity must exercise judgment in determining whether an item is an accessory or a component. This determination should be based on the use of the item in the machine tool being purchased.~~

- ~~(c) Valves restricted under this section are those powered and non-powered valves listed in Federal supply classes 4810 (valves, powered) and 4820 (valves, non-powered) used in piping for naval surface ships and submarines.~~

~~225.7004-3 Exception.~~

~~This restriction does not apply if the acquisition is below the simplified acquisition threshold.~~

~~225.7004-4 Waiver.~~

- ~~(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:~~

- ~~—— (1) The restriction would cause unreasonable delays.~~
- ~~—— (2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.~~
- ~~—— (3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense~~
- ~~—— (4) Satisfactory quality items manufactured in the United States or Canada are not available.~~
- ~~—— (5) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.~~
- ~~—— (6) Application of the restriction is not in the national security interests of the United States.~~
- ~~—— (7) Application of the restriction would adversely affect a U.S. company.~~
- ~~—— (b) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.~~

~~225.7004-5 U.S. or Canadian origin.~~

- ~~—— (a) A valve or machine tool shall be considered to be of U.S. or Canadian origin if ——~~
 - ~~—— (1) It is manufactured in the United States or Canada; and~~
 - ~~—— (2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components.~~
- ~~—— (b) The cost of components shall include transportation costs to the place of incorporation into the end product and duty (whether or not a duty-free certificate may be issued).~~

~~225.7004-6 Contract clauses.~~

- ~~—— (a) Unless an exception applies or a waiver has been granted, use the clause at 252.225-7017, Preference for United States and Canadian Valves and Machine Tools, in all solicitations and contracts for valves and machine tools.~~
- ~~—— (b) Consider using the clause at 252.225-7001, Buy American Act and Balance of Payments Program, and, if applicable, the clause at 252.225-7007, Trade Agreements Act, whenever an exception or waiver is anticipated. Where these clauses are used, state in the solicitation that offers which do not conform to the restrictions of the more restrictive clause will only be considered if an exception applies or a waiver is granted.~~
- ~~—— (c) Use the provision at 252.225-7040, Machine Tool List, in all solicitations for machine tools which contain the clause at 252.225-7017, except where ——~~

~~—— (1) All machine tool accessories are listed as separate line items; and~~

~~—— (2) The solicitation does not allow offerors to provide accessories which are not specifically required by the specifications.~~

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225.7005 Waiver of certain restrictions

Where provided for elsewhere in this subpart, the restrictions on certain foreign purchases under 10 U.S.C. 2534 maybe waived as follows :

(a) The head of the contracting activity may waive the restriction on a case-by-case basis upon execution of a determination and findings that any of the following applies:

- (1) The restriction would cause unreasonable delays.
- (2) United States producers of the item would not be jeopardized by competition from a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.
- (3) Application of the restriction would impede cooperative programs entered into between DoD and a foreign country, and that country does not discriminate against defense items produced in the United States to a greater degree than the United States discriminates against defense items produced in that country.
- (4) Satisfactory quality items manufactured in the United States or Canada are not available.
- (5) Application of the restriction would result in the existence of only one source for the item in the United States or Canada.
- (6) Application of the restriction is not in the national security interests of the United States.
- (7) Application of the restriction would adversely affect a U.S. company.

(b) The restriction is waived when it would cause unreasonable costs. The cost of the item of U.S. or Canadian origin is unreasonable if it exceeds 150 percent of the offered price, inclusive of duty, of items which are not of U.S. or Canadian origin.

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225.7007 Restriction on acquisition of foreign buses

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225.7007-4 Waiver.

The waiver criteria at 225.X334-4 [7005] also apply to this restriction

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225.7010 Restriction on certain chemical weapons antidote

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225.7010-3 Waiver.

The waiver criteria at 225.7004-4[7005] ~~also~~ apply to this restriction.

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225.7016 Restriction on air circuit breakers for naval vessels.

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225.7016-3 Waiver.

The waiver criteria at 225.7004-4[7005] ~~also~~ apply to this restriction. .

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225.7019 Restrictions on ball and roller bearings.

225.7019-1 Restrictions.

- (a) In accordance with 10 U.S.C. 2534, through fiscal year 2000, do not acquire ball and roller bearings or bearing components which are not manufactured in the United States or Canada.
- (b) In accordance with Section 8099 of Pub. L. 104-61 [and similar sections in subsequent Defense appropriations acts], do not use fiscal year 1996 [or subsequently appropriated] funds to acquire ball and roller bearings *other than those* produced by a domestic source and of domestic origin, i.e., bearings and bearing components manufactured in the United States or Canada.

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225.7022 Restrictions on totally enclosed lifeboat survival systems.

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225.7022-3 Waiver.

The waiver criteria at 225.7004-4[7005] apply only to the restriction of 225.7022-1(b).

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PART 252-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

As prescribed in 212.301 (f)(iii), use the following clause:

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS APPLICABLE TO DEFENSE ACQUISITIONS OF COMMERCIAL ITEMS (NOV 1995[NOV 1996])

(a) ***

- (b) The Contractor agrees to comply with any clause that is checked on the following list of DFARS clauses which, if checked, is included in this contract by reference to implement provisions of law or Executive Orders applicable to acquisitions of commercial items or components.

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~~252.225-7017 Preference for United States and Canadian Valves and Machine Tools (10 U.S.C. 2534(c)(2)).~~

252.225-7017 ~~Preference for United States and Canadian Valves and Machine Tools~~[Reserved].

~~As prescribed in 225.7004-6(a), use the following clause:~~

~~PREFERENCE FOR UNITED STATES AND CANADIAN VALVES AND MACHINE TOOLS (APR 1995)~~

- ~~(a) For the purpose of this clause, a valve, machine tool, or machine tool accessory is considered to be of United States or Canadian origin if—~~
- ~~(1) It is manufactured in the United States or Canada; and~~
- ~~(2) The cost of its components manufactured in the United States or Canada exceeds 50 percent of the cost of all its components. The cost of components includes transportation costs to the place of incorporation into the end item and duty (whether or not a duty free entry certificate may be issued).~~
- ~~(b) Unless otherwise specified in its offer, the Contractor agrees that valves used in piping for naval surface ships and submarines within Federal supply classifications 4810 (valves, powered) and 4820 (valves, non-powered), machine tools within the Federal supply classifications for metalworking machinery numbered 3405, 3408, 3410 through 3419, 3426, 3433, 3438, 3441 through 3443, 3445, 3446, 3448 and 3449, and machine tool accessories numbered 3460 and 3461 delivered as end items or purchased indirectly on behalf of the Government under this contract shall be of United States or Canadian origin.~~
- ~~(c) Unless an exception applies or a waiver is granted under 225.7004-4(a) of the Defense Federal Acquisition Regulation Supplement, preference will be given to valves and~~

~~machine tools of United States or Canadian origin by adding 50 percent to the offered price of all other valves and machine tools for evaluation purposes.~~

~~(End of clause)~~

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~~252.225-7040 Machine Tool List.~~

~~As prescribed in 225.7004-6(c), use the following provision:~~

~~MACHINE TOOL LIST (MAY 1995)~~

~~The Government has identified those items listed as machine tool accessories which are not listed in the schedule as separate line items. The Offeror must also list any accessories to be provided which are not specifically required by the specifications. Where the machine tool accessory is not of U.S. or Canadian origin, as defined in the Preference for United States and Canadian~~
~~was manufactured and the cost of the accessory.~~

Line Item No.	Accessory	Country of Manufacture	Cost

~~(End of provision)~~

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